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No. 80-197

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

WORLDWIDE CHURCH OF GOD, INC., *et al.*,
Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR LOS ANGELES COUNTY

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QUESTIONS PRESENTED

1. Whether, pursuant to an *ex parte* court order, a State Attorney General's searches of the premises of a church and of its accounting and advertising firms and the seizures therefrom of books, papers and effects met the requirements of the First, Fourth, and Fourteenth Amendments, where:

   a. The order was not issued upon probable cause;

   b. The order contained no provision particularly describing the places to be searched or the papers or things to be seized; and

   c. The search and seizures themselves were unlimited, general and indiscriminate and resulted in the removal of thousands of documents, books and records.

2. Whether such searches and seizures are immune from compliance with First and Fourth Amendment requirements:

   a. Because the *ex parte* court order appointed a temporary receiver for the church under whose nominal supervision the Attorney General conducted the searches and seizures; or

   b. Because no church or other charity has "any reasonable expectation of privacy" from the Attorney General in any of its papers and effects, all of which are "truly owned . . . by . . . the people of California . . ."

PARTIES

Petitioners are the Worldwide Church of God, Inc., Ambassador College, Inc., and Ambassador International Cultural Foundation (all incorporated in California and hereinafter collectively referred to as "the Church"); Herbert W. Armstrong, the founder and Pastor General of the Church and of the unincorporated spiritual body, the Worldwide Church of God ("Worldwide Church"), of which the Church is a corporate instrumentality; Stanley R. Rader, Treasurer of the Church, Evangelist in the Worldwide Church, and senior personal advisor to Mr. Armstrong; Ralph K. Helge, long-time attorney and officer of the Church; Henry Cornwall, a close associate of Messrs. Rader and Helge; and Worldwide Advertising, Inc., a California corporation through which the Church proclaims its gospel and disseminates other information.

Respondent is the People of the State of California.

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OPINIONS BELOW

The order of the Superior Court of the County of Los Angeles denying Petitioners' motion for the return of property illegally seized and for suppression of its use is unreported and produced at App. 1a. No opinion was rendered by the Court of Appeal of the State of California, which denied Petitioner's Petition for Writ of Mandate by Order dated April 22, 1980. App. 3a. No opinion was issued by the Supreme Court of California, which denied Petitioners' Petition for Hearing, one justice dissenting, by Order dated June 4, 1980. App. 4a.

JURISDICTION

The judgment of the Superior Court sought to be reviewed by this Petition was an order denying Petitioners' motion for return of property, entered on March 14, 1980. Such a ruling on a motion to return property illegally seized is considered final under California law, subject to discretionary review by Writ of Mandate. *People* v. *Gershenhorn*, 225 Cal. App. 2d. 122, 126, 37 Cal. Rptr. 176, 178 (1964). Petitioners filed a timely Petition for Writ of Mandate in the Court of Appeal of the State of California, Second Appellate District, Division Four. That Petition was denied by Order entered April 22, 1980. Review was further sought in the California Supreme Court by Petition for Hearing dated May 2, 1980, and denied by Order filed June 4, 1980. This Petition is being filed within 90 days of the June 4, 1980, Order. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3). See *Stanford* v. *Texas*, 379 U.S. 476, 480 (1965).

CONSTITUTIONAL PROVISIONS INVOLVED

The following constitutional provisions are involved in this Petition for Certiorari:

United States Constitution, Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

United States Constitution, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment XIV, § 1:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The Worldwide Church is a half century old church with an international membership of over 70,000 members, maintaining a corporate headquarters in Pasadena, California. On the morning of January 3, 1979, without any prior warning, the California headquarters of the Church was forcibly taken over by officers of the State, who occupied the building for a period of seven weeks, searching the files of the Worldwide Church without restriction and indiscriminately seizing thousands of documents from its offices and the offices of its advertising firm and independent accountant. The pertinent facts are as follows: [1]

1. On January 2, 1979, the day preceding the takeover, without notice to Petitioners, a Deputy Attorney General, three Specially Appointed Deputy Attorneys General who on behalf of six Church dissidents instigated this action by the Attorney General's office, and a person they had preselected as a receiver, all met *ex parte* with a Superior Court judge. They discussed with him a complaint they proposed to file which charged certain Church leaders with "pilfering" and "siphoning" Church revenues and which sought an accounting, removal and replacement of directors, appointment of a receiver, and injunctive and other relief. The judge agreed that, after

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[1] The facts stated herein are confined to matters of record below which were not disputed by the Attorney General. Only the legal inferences to be drawn therefrom are in dispute.

the filing of the proposed complaint, he would appoint the pre-designated person as temporary receiver. After this meeting, the complaint was filed and the Superior Court judge signed an order appointing the temporary receiver. App. 5a, 1b, 11b.

2. The order appointing the temporary receiver directed him "to take possession . . . of all of the funds, assets, and property" of defendants Worldwide Church of God, Inc., and its associated corporations" "and of all the books and records." App. 5a.

3. The allegations of the complaint concerning wrongdoing were all made on information and belief. Although declarations were filed by the Attorney General in support of his application for appointment of a temporary receiver (App. 23b), many of the allegations in the declarations concerned transactions which were from two to eleven years old or more.[2] Many were based on information contained in audit reports of the Church and disseminated through Church publications such as the Pastor's Report to Church ministers. App. 34b, 109b. The allegation deemed crucial by the judge signing the *ex parte* order appointing the temporary receiver,[3] as

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[2] For example, the principal alleged "self-dealing" transactions of Petitioner Rader relied on by the Attorney General in the declarations involved the lease of a plane to the Church in 1967, an advertising agency formed in 1969, a house purchased in 1971, and an employment contract entered into in 1976, all publicly disclosed to the Church ministry in a Pastor's Report in August 1978. App. 40b-44b.

[3] The judge in his *ex parte* meeting described as a "cruncher" the allegations of imminent sale of a Church college campus in Texas for ten million dollars which was alleged to be worth thirty million. App. 12b. The allegation of a thirty million dollar value was based on newspaper stories and the unsupported statement of a heating and plumbing contractor App. 107b-108b, 138b-142b. Subsequently

well as other allegations of massive liquidation of Church real estate in Pasadena below market value, were later found by the Superior Court to rest on "sheer speculation, conclusion and hearsay." App. 239b.

4. Nonetheless, the *ex parte* order appointing the temporary receiver was signed by the judge who had agreed in advance to sign it. The next morning, January 3, 1979, with no warning whatsoever to the Church or to any other Petitioner, the temporary receiver, with a Specially Appointed Deputy Attorney General, two State security officials, four local police officers, sheriff's agents, a district attorney, and State and private auditors, appeared at the Church's Pasadena headquarters. The Specially Appointed Deputy Attorney General demanded from Petitioner Rader's secretary "all files in your office." She was threatened with arrest when she said she wanted to talk to an attorney. A policeman banged on the office door with a night stick, threatening to arrest those within when the door was opened. App. 162b, 177b, 216b.

5. Threats were made that the doors would be broken down to gain access to the executive suite of offices on the fourth floor of the Church building. The temporary receiver himself subsequently ordered that "whatever

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produced evidence demonstrated that the sale was not imminent and in fact was for a price in excess of its appraised value. App. 246b-247b.

Similarly, the allegation of shredding of documents was based on a single statement by a declarant that: "I have also been advised that many records are being mechanically shredded or destroyed." App. 107b. Neither that nor any other declarant specified what documents were being shredded, the purpose for doing so, the identity of the alleged shredders, or the underlying circumstances, if any, which supported the conclusory statement of shredding. Moreover, at a subsequent hearing a Superior Court judge found no reliable evidence o fshredding or tampering with records. App. 249b.

force" was necessary to gain access to the offices on the fourth floor that were locked would be used. App. 166b, 179b.

6. When access was gained, the State representatives "rushed in the room and started picking up files, boxes, and otherwise seizing everything in the office that was made of paper." App. 163b. "They rummaged through every office in the executive suite, including the offices" of Petitioners Armstrong and Rader. They "were going through drawers, cabinets, files, and closets, etc., so fast, and in so many different areas at once, that it was impossible . . . to even monitor or observe the files and records they were going through or pulling out, or what files they took and what they left." App. 219b-220b.

7. Searches were made in air conditioning vents for allegedly hidden records. An attorney for the Church who appeared on the scene, and other Church officials, were subsequently prevented from observing what was occurring; they were locked out of the offices being searched and the locks on the doors were changed. Voluminous files, records, documents, and other writings were subsequently seized and carted away to the receiver's office. App. 164b.

8. When Church personnel were finally allowed back into the executive suites five days later, "the offices were in a shambles . . . . One of [the] xerox machines was smoking." "One of the machines was actually burned out so that it had to be replaced and the other had to be repaired." Eleven boxes of documents of the former treasurer of the Church were gone and Church personnel have never been informed of what happened to them. App. 215b.

9. Employees of the Church were also locked out of the data processing center of the Church, its accounting department. When they later were allowed to re-enter, they found the center in a state of complete disarray

with files jumbled and mixed up. To this day, Petitioners have never received an inventory of the tapes and other files and documents that were removed. App. 164b, 184b-185b.

10. That same morning, January 3, 1979, a special agent of the California Department of Justice, together with two Specially Appointed Deputy Attorneys General, appeared unannounced at the offices of the Church's accounting firm. They "demanded immediate access" from the managing partner of the firm to all of the records relating to the Church. Despite his protest that the documents in his possession were those of his accounting firm and not those of the Church and, therefore, not subject to the Court order at all, he was told that the powers of those demanding the records were "sufficiently extensive to embrace our records." By telephone the Deputy Attorney General who had presented the *ex parte* order to the judge told the accountant that "he [the Deputy Attorney General] is indeed in charge of the investigation and that the accountant had no privilege not to produce the documents." The State representatives seized and removed ten boxes of records belonging to the accounting firm. No inventory of the documents seized was made. Although about six weeks later the documents were allegedly returned after being copied, the accountant is aware of at least one document that was not returned and has no way of knowing whether others were not returned. App. 180b-183b.

11. The *ex parte* order of the Superior Court appointing the temporary receiver on January 2, 1979, makes no reference whatsoever to the Church's accounting firm. App. 5a.

12. One of the Specially Appointed Deputy Attorneys General went to the office of Petitioner Worldwide Advertising, Inc. It is admitted that from that office he "collected" the executive payroll records and other related records of the Church. App. 196b.

13. In the January 2 Order appointing the temporary receiver, the reference in the *proposed* order to "Worldwide Advertising, Inc., a California corporation" was crossed out by the judge, an act known and agreed to by a Deputy Attorney General and a Specially Appointed Deputy Attorney General. App. 5a, 21b.

14. The three Specially Appointed Deputy Attorneys General, at whose instigation on behalf of Church dissidents ("the Relators") the Attorney General filed the complaint and who pre-selected the Receiver, were in turn appointed Deputy Receivers by the Receiver. They led and conducted the searches and seizures in dispute. App. 196b. Their position as Specially Appointed Deputy Attorneys General was recognized by the Superior Court and repeatedly self-confirmed in the presence of the Superior Court and the Deputy Attorney General in charge of the State's investigation. App. 203b-204b, 223b, 226b-227b, 232b.

15. In late June, 1979, by order of the Superior Court, the Attorney General's Office gave the Church and other Defendants named in the complaint a list of the documents of the Church still in the State's possession as of June 15, 1979. The documents were more than 800 in number. The accounting firm which was used to conduct an audit of the Church furnished to Petitioners a list purporting to identify the documents it received, a list numbering 6918. App. 250b. At no time, however, have Petitioners ever received an inventory of what records, documents, files, other written materials, and tapes were seized from what premises, when, and by whom.

16. In the Superior Court proceeding,[4] the Church asserted violations of its Fourth Amendment rights in an

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[4] Discovery orders in that proceeding have been the subject of a petition for certiorari denied on June 2, 1980. *Worldwide Church of God, Inc., et al.* v. *State of California, et al., cert. denied*, 48 U.S.L.W. 3780 (U.S. June 2, 1980).

area protected by the First Amendment as well as violations of California law, and moved for a return of "all records, documents, files, tapes and other written materials and all fruits thereof taken from the premises" of the Church, alleging among other things "the lack of probable cause for issuance of the *ex parte* order; failure to notify the defendants of the proposed order; the absence of a valid search warrant based on probable cause stating with particularity the places to be searched and the property to be seized; the illegal exploratory, indiscriminate nature of the search and seizure . . ." App. 160b. The Superior Court denied that motion. The Church asserted violations of its constitutional rights both in the Petition for Writ of Mandate in the Court of Appeal and in the Petition for Hearing in the Supreme Court of California. Both Petitions were denied. App. 3a, 4a.

REASONS FOR GRANTING THE WRIT

The issue presented by this case—whether Fourth Amendment requirements apply when a State Attorney General secures an *ex parte* Court order appointing a receiver for an institution, here a church, and then, acting under the nominal supervision of the receiver, the Attorney General's office directs and participates in the forcible takeover of the church and the warrantless, indiscriminate seizure of its books and records—has not previously been decided by this Court or other federal courts.[5] The issue calls for review by this Court because

[5] In *Dier* v. *Barton*, 262 U.S. 147 (1923) this Court held that an involuntary bankrupt could not object on Fourth and Fifth Amendment grounds to the use in state grand jury proceedings involving him of his books and records which "were lawfully taken from him" and in the possession of a bankruptcy receiver. *Id.* at 150. In *United States* v. *Evans*, 572 F.2d 455, *cert. denied*, 439 U.S. 870 (1978) the Fifth

of the egregious Fourth Amendment violations established by the undisputed facts stated *supra*. Perhaps even more important, review is warranted because of the untenable and dangerous positions taken by the Attorney General on this issue in the State courts. The State's positions, though not formally reflected and approved in any court opinion (there being none), have nevertheless prevailed: Petitioners' motion was opposed on the basis of the Attorney General's arguments that the First, Fourth, and Fourteenth Amendments had not been violated; the Superior Court summarily ruled for the Attorney General; and Petitioners remain deprived of their books and records. The danger is that the State's success in its courts, both in obtaining the initial order and in defending the conduct taken pursuant to it, will lead to recurring and equally flagrant violations of the constitutional rights of others since it will reinforce the State's gross misconception of its power and authority over churches and other charitable entitles within its reach.

The premise upon which the State has acted throughout is that, vis-a-vis the Attorney General, the Church has no protectible Fourth Amendment interests in its books and records. As reflected in its Opposition to Petitioners' Motion in the Superior Court and in oral argument, the State's theory is that Petitioners have "no privileges, constitutional or otherwise" against investigation by the Attorney General, because a church or any nonprofit organization is a "charitable trust," whose assets and records belong to the public as beneficiary. App. 205b-212b, 228b-229b. Because the Attorney General is the representative of the public, "his inspection of [Petitioner Church's] records cannot constitute an un-

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Circuit found that an *ex parte* hearing and restraining order leading to a receiver's seizures in a state instigated receivership had "afforded safeguards as full as those provided by the process of obtaining a warrant." *Id.* at 486 n.43.

reasonable search and seizure within the Fourth Amendment" because, as against the trust beneficiary, "a trustee has no reasonable expectation of privacy in trust records." App. 210b.

Acceptance of this argument would permit the Attorney General, without any restraint whatsoever, to do as he has done here—to forcibly enter without notice, ransack and seize books and records without limit from any church, synagogue or other religious organization, or from persons or businesses who have been entrusted with their records (such as accountants or advertisers), wherever they may be located and whenever he chooses.

It is hardly surprising that Respondent was unable to unearth any authority in support of this astounding position. Indeed, the law is obviously directly to the contrary. Where, as here, "First Amendment interests would be endangered by a search," *"the courts apply the warrant requirements with particular exactitude."* *Zurcher* v. *Stanford Daily*, 436 U.S. 547, 565 (1978) (emphasis supplied). *See also*, *Stanford* v. *Texas*, 379 U.S. 476, 481-85 (1965); cf. *United States* v. *United States District Court*, 407 U.S. 297, 313-14 (1972).[6] Here, however, the Attorney General did not apply the warrant requirements to churches "with particular exactitude." He ignored them altogether. Indeed, with the unquestioning, prearranged acquiescence of the hearing judge, he abolished them. Yet the books and record thus seized from Petitioners have not been returned to them.

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[6] Contrast the limited exception for warrantless searches of firearms, alcohol, or other closely regulated businesses. *United States* v. *Biswell*, 406 U.S. 311 (1972); *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1972). In the state courts the Attorney General, remarkably, contended that this exception applied to churches as well. App. 212b-213b.

In defending this outcome below, the Attorney General also contended that Fourth Amendment requirements are inapplicable because the search and seizure was undertaken against the Petitioners pursuant to a judicially-created receivership.[7] This argument proves too much. Its underlying and plainly mistaken premise is that the judicial origins of the challenged conduct, and the usual function of a receivership (to take over a business or institution), can suffice to legitimize the illegality that resulted. In fact, just the opposite is true. There is no irreconcilable conflict between the Fourth Amendment and a receivership obtained at the request of the State as long as the authority requesting the receivership and the authority appointing the receiver recognize that it is the receivership that must accommodate the Fourth Amendment and not the reverse. Here, no such accommodation was attempted, let alone accomplished. Indeed, the need to reach any accommodation with Petitioners' rights of privacy was blatantly ignored.

The procedure followed in obtaining the appointment of the receiver in this case and the execution of the order appointing him is not unlike that followed with a search warrant. State law enforcement authorities appeared *ex parte* before the Superior Court secured an order purporting to authorize them to enter Petitioners' premises to seize papers and other property, and then executed

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[7] The instant receivership, of course, is not one involving private litigants only. This is a case in which the receivership was created at the instigation of the chief law enforcement officer of the State, and in which the resulting searches and seizures, carried out pursuant to the receivership, were led and conducted by State authorities. This was of course state action, as the Attorney General conceded at oral argument in the Superior Court. App. 223b ("the issuance of the Court Order and its implementation are state action just as much as the action of a deputy attorney general.")

that order. The constitutional deficiency is that Petitioners, as victims of this search and seizure, were accorded none of the Fourth Amendment protections (1) of particularity and probable cause, and (2) from resulting indiscriminate, exploratory searches and seizures.

The label of a "receivership" cannot mask the reality of a warrantless intrusion by the State in a civil investigation, an intrusion to which Fourth Amendment requirements unquestionably apply. *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, 312-313 (1978). The receiver here was not, as the concept ordinarily implies, a neutral court officer. Instead, he was a partisan of the State, preselected by it, who, once appointed, promptly delegated to those who obtained his appointment the authorization to take possession of the Church's books and records (App. 156), an authorization they turned into the opportunity to conduct a limitless, exploratory and grossly illegal search and seizure.

Thus the warrantless raid and seizure accomplished by the State in this case cannot be sustained on the basis invoked by the Attorney General, absent the creation of new warrant exceptions applicable peculiarly (1) to religious institutions, regarded as charitable trusts having no Fourth Amendment rights against the Attorney General, and (2) to State-secured receiverships which afford the State even greater search and seizure authority than warrants but impose no Fourth Amendment restirctions. Review by this Court is necessary to establish that these Fourth Amendment exceptions urged by the State do not comply with Fourteenth Amendment requirements.

Unadorned by the State's argument that religious institutions lack constitutional protection against the Attorney General's searches and seizures, and that otherwise invalid searches and seizures may be saved by a receivership label, this case would be directly governed by *Stan-*

ford v. *Texas*, *supra*, and would call not for plenary review but for summary reversal. That *only* the State's novel claims may be offered in support of the searches and seizures upheld below becomes clear once one examines the State's one attempt to defend its conduct in more conventional terms.

Lack of Particularity and Probable Cause, and Indiscriminate Searches and Seizures

As a second avenue of defense, the Attorney General argued in the Superior Court that the order appointing the temporary receiver "was the legal equivalent of a search warrant to the extent that a warrant was necessary." App. 222b. The *ex parte* order, however, clearly was *not* the legal equivalent of a search warrant because it did not remotely satisfy Fourth Amendment requirements of particularity and probable cause.

a. *Particularity.* It is clear from its face that the *ex parte* order appointing the temporary receiver did not state with particularity the places which could be searched and the things—records, documents, files and written materials—which could be seized. As to places, the order contained no authorization whatsoever, particularized or not, to search any location. Insofar as it could be and clearly was construed by State authorities to permit them to search and seize "where they pleased," unrestrained by the requisite particularity, it was a constitutionally defective general warrant. *Payton* v. *New York*, 100 S. Ct. 1371, 1378-79 n.21 (1980).

The order also impermissibly authorized the receiver to take possession of *all* of the Church's books and records. No limits of any sort were set on the kinds or nature of the Church papers and documents subject to seizure, whether confidential Church communications, other ecclesiastical items, business journals, audit reports, or other financial and accounting records. Nor were any limits set regarding the dates of records to be seized.

Execution of the order, therefore, resulted in precisely the kind of indiscriminate and random search and seizure that is the very danger of and objection to a limitless decree. *Lo-Ji Sales, Inc.* v. *New York*, 442 U.S. 319, 328-29 (1979). When the temporary receiver was subsequently questioned about what documents he had asked a Specially Appointed Deputy Attorney General to obtain from the Church's accountants located in another part of town from the Church, he replied, "[N]one in particular. Whatever he could find, I think." App. 227b. Nothing could better demonstrate the indiscriminate nature of these searches or more clearly establish their character as egregious violations of the constitutional rights of Petitioners. *Payton* v. *New York*, *supra*, at 1378-1379 n.21.

Although a receiver appointed at the behest of a private party may take possession of all books and records to operate a business, *the State* cannot, under the guise of an *ex parte* receivership obtained by it, forcibly seize the books and records of an institution without compliance with otherwise applicable Fourth Amendment standards. To hold otherwise would allow, and indeed invite, unwarranted circumventions of Fourth Amendment particularity requirements. And the order in this case simply will not do service as the equivalent of a particularized warrant. *Marshall* v. *Barlow's, Inc.*, *supra*, at 324 n.22 ("Delineating the scope of a search with some care is particularly important where documents are involved.").

b. *Probable Cause.* It is equally clear that the *ex parte* order authorizing the temporary receiver to take possession of the Church's books and records was not based on probable cause to believe that such books and records were fruits, implements, or evidence of crime. Although in *Marshall* v. *Barlow's Inc.*, *supra*, the Supreme Court noted that for "purposes of an administra-

tive search, probable cause in the criminal sense was not required" *if* "the search [was] to be conducted pursuant to an administrative plan containing specific neutral criteria" (436 U.S. at 320, 323), it is plain that there was no "administrative plan" containing "specific neutral criteria" in this instance. Consequently, the standard against which the search and seizure of Petitioners' property must be measured is probable cause in the criminal sense, particularly where, as here, the allegations in the complaint—"pilfering", "siphoning off", shredding of documents—charged conduct undeniably criminal in nature under California law. App. 1b.

Judged by this test, the invalidity of the challenged search and seizure is evident. The declarations used to procure the authorization to conduct the search did not even approach establishing the requisite probable cause. For example, the allegations about the shredding of documents and liquidation of real estate below market value were conclusory and speculative hearsay. App. 107b-108b. Thereafter, at a subsequent hearing, the Court below specifically found those allegations, which had been made solely on the basis of information and belief and not on personal knowledge, to be without factual support. App. 243b. Although hearsay can be relied on to establish probable cause, the speculative, unsupported, conclusory hearsay involved here was wholly insufficient. *Aguilar* v. *Texas*, 378 U.S. 108 (1964).

The Attorney General's allegations relating to excessive expenditures by Petitioner are similarly insufficient. While these averments may reflect the standards of frugality and extravagance *he* would impose on religious organizations, they clearly do not establish probable cause to believe crimes have been committed. There was no concealment of these expenditures; virtually all of the information relied on by the Attorney General came directly from the Church's own accounting and financial

records. It is clear that non-concealed reports of allegedly excessive expenses involving transactions from two to eleven years old do not establish probable cause for search warrants. Indeed, the declarations here do not establish even mere suspicion of criminal violations, let alone probable cause.

In short, none of the declarations presented to the Superior Court judge provided grounds for the issuance of the *ex parte* order upon which the search and seizure undertaken against Petitioners was based. Plainly the order should not have been issued and the raid should not have been executed. This illegality cannot be allowed to stand.

CONCLUSION

Viewed as an ordinary search and seizure decision, the judgment below should therefore be reversed on the authority of *Stanford* v. *Texas*.[8] Viewed instead as a

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[8] The procedural posture of this case is virtually on all fours with that in *Stanford* v. *Texas, supra*. There a lower court (magistrate) denied a motion to annul a search warrant and to obtain the return of property seized thereunder. Its order was final and not reviewable on direct appeal or otherwise. This Court granted certiorari. *Stanford* v. *Texas*, 377 U.S. 989 (1964). The only difference here is that, although denial of the motion to return property is final under California law, it is subject to discretionary review (*People* v. *Gershenhorn, supra*), and Petitioners have exhausted that avenue of review. The judgment below is therefore a "[f]inal judgment or decree rendered by the highest court of a State in which a decision could be had . . ." 28 U.S.C. 1257. *Minneapolis St. Paul & Sault St. Marie Ry. Co.* v. *Rock*, 279 U.S. 410 (1929); *Virginian Ry. Co.* v. *Mullens*, 271 U.S. 220 (1926).

On the merits, in *Stanford* v. *Texas*, this Court held the search illegal, vacated the order denying Petitioners' motion,

decision testing the proposition that Churches enjoy little or no protection against unreasonable search and seizure, at least when the device of a receivership is used, the judgment below raises novel questions of the widest importance. In either event, Petitioners have been aggrieved by searches and seizures that flagrantly violate established First and Fourth Amendment principles. Yet Petitioners continue to be denied the return of their property and other appropriate relief. The First and

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and remanded. If certiorari is granted in this case, that is the precise relief Petitioners would seek from this Court. If Petitioners prevail here on the issue of illegality, on remand they would then seek not only return of this property but also suppression of any use of the property by the State, since under California law both forms of relief clearly would be available. *People* v. *Gershenhorn, supra,* 225 Cal. App. 2d at 124, 37 Cal. Rptr. at 177. The issue of entitlement to suppression in this case has not been resolved by the California Courts, which have simply upheld the legality of the searches and seizures. If the trial court had held the searches and seizures illegal, there is no dispute that under California law Petitioners would have been entitled to immediate return of their property despite the existence of a pending case. *People* v. *Gershenhorn, supra,* 225 Cal. App. 2d at 126, 37 Cal. Rptr. at 177-78. The unanimous opinion of this Court in *Stanford* v. *Texas, supra,* does not disclose whether any case was pending in which the seized property may have been used. The pendency of such a case is similarly of no consequence here. For under California law the motion to return property is considered "a separate procedure" and "unlike an order denying a motion to suppress, an order denying return cannot be regarded as interlocutory in nature. . . ." *People* v. *Gershenhorn,* 225 Cal. App. 2d at 125, 37 Cal. Rptr. at 178.

Fourth Amendment issues thus presented clearly warrant resolution by this Court.

Respectfully submitted,

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APPENDIX A

APPENDIX A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Dept. 80

Date—March 14, 1980

Honorable Robert Weil, Judge

I. Brown, Deputy Cleark

L. Sartorio, Reporter

C 267 607

THE PEOPLE OF THE STATE OF CALIFORNIA

vs

WORLDWIDE CHURCH OF GOD, INC.,
a California Corp., *et al.*

Counsel for Plaintiff

George Deukmejian
By: L. Brainard (x)
J. Cordi (x)

Counsel for Defendant

Ervin, Cohen and Jessup
By: A. Browne (x)
E. Silbert (x)
M. Morgan (x)
R. Helge (x)

Nature of Proceedings

Motion of defendants for return of property illegally obtained and suppression of all use direct or indirect, of the property obtained

(SECOND CONT)

Request to admit E. Silbert as attorney pro hac vice is granted. Requirement of CRC 983 is waived.

Motion is argued and taken under submission.

LATER: Motion is denied.

Counsel for respondent to give notice.

Counsel notified by U. S. mail as follows:

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Los Angeles, Calif. 90010

Los Angeles, Cal. Apr. 22, 1980

No. 59032

WORLDWIDE CHURCH OF GOD, INC.

vs.

SUPERIOR COURT, L.A. CO.

The Court:

Petition for writ of mandate denied.

CLAY ROBBINS, *Clerk*

Order Due June 20, 1980

ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL

2d District, Division 4, Civil No. 59032

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

WORLDWIDE CHURCH OF GOD, INC., ETC., ET AL.,
Petitioners,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent;

PEOPLE, ET AL.,
Real Parties in Interest.

Petition for hearing DENIED.

Bird, C.J., is of the opinion that the petition should be granted.

/s/ Bird
Chief Justice

I, G. E. BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of the Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 6th day of June A.D. 1980.

/s/ R. Necco
Deputy Clerk

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Attorneys for Plaintiff and Relators

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

No. C 267607

THE PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*
ALVIN EARL TIMMONS, *et al.*,
Plaintiff,

vs.

WORLDWIDE CHURCH OF GOD, INC.,
a California corporation, *et al.*,
Defendants.

ORDER APPOINTING TEMPORARY RECEIVER; TEMPORARY RESTRAINING ORDER; AND ORDER TO SHOW CAUSE RE RECEIVER AND INJUNCTION PENDENTE LITE

Upon reading and considering the verified complaint on file herein, and the Ex Parte Application for Temporary Restraining Order, etc. and supporting Memorandum and Declarations; and good cause appearing therefor, IT IS HEREBY ORDERED AS FOLLOWS:

1. The defendants and each of them, are hereby ordered to appear before this Court in Department 85, at 111 North Hill Street, Los Angeles, California 90012, at 9:00 a.m., on January 10, 1979, then and there to show cause why:

(a) The Honorable Steven S. Weisman, a retired Judge of this Court, should not be appointed as receiver *pendente lite*, to take possession; until further order of this Court, of all of the property of defendants Worldwide Church of God, Inc. and its associated corporations (as identified in the complaint on file herein), and of all their books and records; and empowering him to take such actions as he deems, in the reasonable exercise of his discretion, appropriate to recover property or assets wrongfully taken from the Church, and to prevent the further dissipation of Church property and assets, said power to include without limitation the power to bring lawsuits in the name of the Church or any of its affiliated organizations, and to retain independent accountants, lawyers, and other professional assistants to assist him the prosecution of such lawsuits;

(b) An injunction *pendente lite* should not issue, restraining the defendants, their agents, employees, and all persons acting in concert with them, during the pendency of the action, from interfering in any way with the actions of said receiver, and from withholding from him any of the funds, assets, books, records, or administrative

facilities of the corporate defendants; and further enjoining and restraining the individual defendants and each of them, their agents, employees, and all persons acting in concert with them from selling, mortgaging, transferring, disposing, or asserting ownership in any other way, over the property or assets of any of the corporate defendants, except with the written consent of the receiver or with leave of Court.

2. Pending the hearing on said Order to Show Cause, the said Steven S. Weisman is hereby appointed forthwith as a temporary receiver, and upon qualifying and posting a bond pursuant to C.C.P. § 567 in the sum of $10,000, [J.P.] he is authorized to act pending the hearing on said order to show cause, and to take possession forthwith of all of the funds, assets, and property, and all of the books and records, of the corporate defendants named in the complaint on file herein, viz: Worldwide Church of God, Inc., a California corporation; Ambassador College, Inc., a California corporation; Ambassador International Cultural Foundation, Inc., a California corporation; [Wilshire Travel, Inc., a California corporation; Worldwide Advertising, Inc., a California corporation; Gateway Publishing, Inc., a California corporation; and Environmental Plastics, Inc., a Texas corporation qualified to do business in California;]* and empowering said receiver to take such actions pending the hearing and said order to show cause as he deems, in the reasonable exercise of his discretion, appropriate to preserve and protect the funds and assets of the Church and its associated corporations from dissipation, misappropriation, or other improper diversion; and

3. Pending the hearing on said Order to Show Cause, the defendants and each of them, and their agents, em-

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* The portion enclosed in bold faced brackets was struck through by the Superior Court Judge and initialed by him before the order was signed.

ployees, and all persons acting in concert with them, are hereby enjoined and restrained from interfering with or obstructing the receiver in the discharge of his duties, or from withholding from him any of the funds, assets, properties, books, or records of the said corporations; and are further temporarily enjoined and restrained from selling, mortgaging, encumbering, or otherwise disposing of any of the assets of the Church or its associated corporations.

4. No bond need be posted herein by plaintiff.

5. A copy of this order, together with a copy of the *ex parte* application and all supporting papers and of the verified complaint, shall be served on each of the defendants no later than 5:00 p.m. on January 4, 1979.
Dated: 2 Jan. 1979

/s/ Jerry Pacht
Judge of the Superior Court